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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,567	02/27/2002	Yanchun Zhao	CA920010020US1	7960
25259	7590	03/07/2007		
IBM CORPORATION 3039 CORNWALLIS RD. DEPT. T81 / B503, PO BOX 12195 REASEARCH TRIANGLE PARK, NC 27709			EXAMINER PATEL, NIRAV B	
			ART UNIT 2135	PAPER NUMBER
			NOTIFICATION DATE 03/07/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RSWIPLAW@us.ibm.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/084,567

Applicant(s)

ZHAO ET AL.

Examiner

Nirav Patel

Art Unit

2135

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1, 2, 4-6, 8-15 and 18-23.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed January 29, 2007 have been fully considered but they are not persuasive.

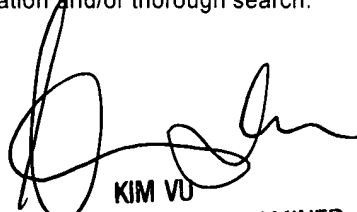
Applicant argues that, Tarbotton fails to teach the message types of the claimed invention.

Examiner disagrees with applicant's remark and still maintains that, Tarbotton's invention relates to field of data processing system for detecting unwanted properties in the received email messages (i.e. messages) [col.1 lines 8-10]. The received message having associated one or more message characteristics. The server receives the message and examines/scans the message for unwanted properties by determining the minimum delay period in dependence upon the one or more message characteristics as show in Figs 1 and 2 [col. 4 lines 14-31]. Fig. 4 illustrates a sequence of rules that applied to the received message in order to determine the minimum delay period to be applied [col. 7 lines 13-15 e.g. *.EXE or *.COM à delay 6 hours or *.DOC or *.BAT à Delay 1 Hour]. As shown in Fig. 4, minimum delay is determined [e.g. *.EXE or *.COM à delay 6 hours or *.DOC or *.BAT à Delay 1 Hour], by identifying the characteristic of the received message [i.e. receiving an identification of an execution program set (e.g. *.EXE or *.COM or *.BAT, etc.)], to process the received message. Further, Fig. 5 illustrates that applying the rules (minimum delay) according to the message types for the received message [i.e. retrieving an identification of all message types (e.g. TEXT, HTML, etc.) associated with said execution program set (e.g. PROGRAM.EXE à TEXT, PROGRAM.EXE à HTML, etc.) and applying the minimum-delay (e.g. 12 Hours or 20 Mins) according to the message types]. Therefore, Tarbotton teaches the claimed limitation.

Continuation of 3. NOTE: The amended independent claims 1, 5, 13 and 24 would raise new issue that would require further consideration and/or thorough search.

In response to applicant's arguments, that the cited reference fail to teach or suggest the recitation "the message includes information for constructing the query that includes information entered by a user directly incorporated therein", the recitation in the remark had not been given patentable weight because it occurred in the preamble when the final rejection was made. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Since current amendment includes the recitation in the body of the claims 1, 5 and 13 and thus have a patentable weight, these claims now raise new issues that would require further consideration and/or thorough search.

With regards to newly added claim 24, would required new issues that would require further consideration and/or thorough search.


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